Case No. 03-38286 GFK Chapter 7

In Re:

Lowell B. Gieseke and Debra Kay Gieseke,

Debtors.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtors Lowell B. Gieseke and Debra Kay Gieseke; their attorney Laurence Stratton; United States Trustee; and all other entities specified in Local Rule 1204 (a):

- 1. DaimlerChrysler Services North America, L.L.C., successor in interest to Chrysler Financial Company, L.L.C., ("DCS"), a secured creditor in this Chapter 7 proceeding, by and through duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.
- 2. The Court will hold a hearing on this motion on **October 25, 2004, at 10:30 a.m.**, before the Honorable Gregory F. Kishel, United States Bankruptcy Judge, in Courtroom No. 228b, 200 Federal Building, 316 North Robert Street, St. Paul, MN 55101.
- 3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

- 4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on December 10, 2003. The case is now pending in this Court.
- 5. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. DCS requests relief from the automatic stay under § 362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtors as defined below.
- 6. On April 15, 2002, the debtors, Lowell Gieseke and Debra Gieseke, executed a promissory note and security agreement in favor of DCS, in the original principal amount of \$36,138.66, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, a 2002 Jeep Grand Cherokee, VIN # 1J4GW58N22C214638. Proof of perfection of the security interest of DCS is attached hereto as **Exhibit "B"**.
- 7. The promissory note is in default for failure to make payments when due since May 15, 2004, a delinquency in the approximate amount of \$3,168.10. As of December 10, 2003, the amount due was a payoff balance of approximately \$28,382.37. On information and belief, the value of the vehicle is \$21,400.00 and the debtors have no equity in the vehicle.

- 8. The loan is in default for failure to make payments when due. DCS seeks relief from the automatic stay to foreclose its personal property security interest in the vehicle.
- 9. Pursuant to 11 U.S.C. § 362(d)(1), a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. DCS believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:
- a. DCS has not been offered and is not being provided with adequate protection for its interest in the vehicle;
- b. The vehicle subject to the security interest of DCS continues to depreciate and decline in value;
- c. DCS has been unable to verify current proof of insurance on the vehicle; and
 - d. The debtors have stopped making payments to DCS.
- 10. Pursuant to 11 U.S.C. § 362(d)(2), a creditor may be granted relief from the automatic stay, if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtors have no equity in the vehicle that is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 7 proceeding.

11. If any testimony is necessary on any of the facts relative to this motion, testimony

will be given by Joseph Quigley, or some other representative of the Movant, DaimlerChrysler

Services North America, L.L.C., successor in interest to Chrysler Financial Company, L.L.C.,

whose address is 400 Horsham Road, Horsham, PA 19044.

WHEREFORE, DCS requests entry of an Order granting the relief from the automatic

stay of 11 U.S.C. § 362, to allow it to foreclose its personal property security interest described

above, and for such other and further relief as the court deems just and equitable under the

circumstances.

Dated: October 12, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn

Marilyn J. Washburn, #0324140 7700 Bonhomme Ave., 7th Floor St. Louis, MO 63105

(314) 727-0101

FAX (314) 727-1086

Attorneys for DCS

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TERMS AND CONDITIONS

5. PRYMERT: You agree to make all payments when they are due. Accepting a list payment to the charge does not change Your payment due date. You may prepay Your debt without pensity. This is a simple interest control. Your list payment may be leasing or examiler, deepending on the best You make payment set for the payment of the special pay

"RECIPITY AGREEMENT. You give us a sequing interest in the Vehicle and all parts or other.
* the Vehicle: all money or goods received for the Vehicle; and all insurance policies and ser fearcad by You in this contract, and any rebate or refunds which relate to those policies or e secures polyment of all amounts You over in this contract.

WABRANTIES: If the Validate is for personal use and use, or the Validat's measurable, and written warranty or service context countries the Validate within 80 days from the date of the east You got implied warrantifes of merchantability and fitness for a periodic purpose severing Valida. Otherwise, You agree that there are no such implied warranties.

MESURANCE: You must insure Yourself and us against loss or damage to the Vehicle
of that Insurance. We must approve the type and amount of insurance. Whether
insured, You must pay for it is lost, damaged or destroyed. You agree that we ma
upon any check or draft representing payment made by an insurance company for

6. DEFAULT: You will be in default if You do not make a payment when it is due; You do not keep any promise in this contract; You life a bankruptory pebblon or one is finder gained; You; Your Vehicle is saided by any local, state or faderal authority; You provided information on the credit application which were not true and accuset; or You breach any promise, representation or wearsary You have made in this contract.

Require You to pay the unpaid Amount Finenced, the semed and unpaid part of the Finance Charge and all -other amounts due; age You to collect the amount You bres; without the use of force or either breach of

the press, writer the premises where the Vehicle stay be, and turbully represents (take healt) the Vehicle taketing explainest or occasionate, take goods found in the Vehicle and hold them for You for thirty (20) days, and if You do not cleam the goods extending that princh, we can dispose of them and heye on labelly to You, and cancel any Credit Lie, Credit Desbritty, Gueranteed Automotive Protection Coverage. Extended Warning or other protocol instruction Stranger (by You under this contract, and apply the returned

If we reposses the Weltick, we will send too a notice. It will state that You may redeen the Velticle and the amount needed to notice. You may redeen the Velticle until we self it. The money from the sale, tess allowed operates, will be applied to the amount You one. If there is any money left, we will exply it to You. If the money how the test allowed operates, will be applied to the amount You one. If there is any money left, we will exply it to You. If the money how the table is not enough, You will pay what is still event for uso pits intenset. If You bought to which for presence, family no thousabled use and the total amount of credit wes 35. To go itself, you will not be fabric for any difficiency. Allowed expenses to the total amount of credit wes 35. To go it see, You will not be fabric for any difficiency. Allowed expenses to the total amount of the contract and the property of the property of the contract and the property of the test and contract of the contract and court Contract.

ASSIGNMENT: You understand that this contract will be assigned to Assignee. Assignee will acquire all of our interest in this contract and in the Vehicle including the right to receive all

GENERAL: Notice to You is sufficient if malked to Your last address known by us. If the law does not allow a part of this contract, their gent will be wrid. The remaining parts will be eatorcaspie. If there is more than one Buyer, thair obligation shall be joint and several. Any obley or emission by us in enforcing our rights shall not act as a webver.

REFERRED PAYMENTS: Any change is this contract must be in writing and signad by a however, it permitted by lane, extensions, determals and due date changes may be agreed to each use, and we will send 'fou a written confirmation of our agreement, interest will confident to not be upsystem in mocked. Any determal would not extend any purchased insurance.

10. SCVERIBMS LAW: This contract shall be governed by the laws of the State of Minnesotz except, if the Vehicle is repossessed, then the law of the State when the Vehicle is repossessed will govern the repossession. Repossession stricted through legal process will be governed by the laws of the state in which such process is brought.

NOTICE: THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS YEHICLE IS PART OF THIS CONTRACT, INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRACT PROVISIONS IN THE CONTRACT OF RALE

The conceding MOTICE posities it the Vehicle is a used vehicle as shown on the trent of this coetract and if this contract is a centract of sale under the FTC lists Meter Vehicle Trade ulation Rule

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DESTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OUTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUMDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUMDER. The preceding MOTICE applies to goods or services obtained primarily for personal, family or household use.

IMPORTANT ARRITRATION DISCURSES

The following Arbitration provisions significantly affect Your rights in any dispute with us. Please read this carefully before You sign the contract.

For purposes of the Arbitration provisions, the term "us" refers to the Buyer and Co-buyer, and Creditor and Forum, or its successor, which may be obtained by mail from The Forum, P.O. Box 60191, Minnearpolis Creditor's successors and essigness.

Minnearpolis 55465-0191, or on the Internet at http://www.arbitration-forum.com.

It either of us chooses, any dispute between us will be decided by arbitration and not in court.
 It a dispute is arbitrated, each of us will give up the right to a Intal by a court or a jury that.

You agree to give up any right You may have to bring a class-action taweuts or class arbitration, or to participate in either as a classifient, and You agree to give up any right You may have to correctitate Your arbitration with the arbitration of others.

The information that can be obtained in discrete generally more limited than in a lawsuit.

5. Other rights that such or as would have in court may not be available in arbitration. Any claim or disputs, whether is contract, for or of otherwise (notuding any disputs over the interpretation, scope, or validity of this contract, that arbitration clause or the arbitratibility of any issue), between us er Creditor's employees, agents, successors or assigns, which arise und of or relate to this contract or any resulting transaction or relationship (including any such relationship with third purities white do not sign this contract) as it is the election of any such mid-service, such contract or sign the contract of said, at the election of other or use of white election of any such their perity, he ensolved by a neutral, binding arbitration and not by a court action. Whoever their demands arbitration may choose to proceed under the applicable rules of the American Arbitration Association, which could be applicable rules of the American Arbitration Association, which could not be applicable rules of the American Arbitration Association, which were all imply where all country and could not a proceed under the applicable rules of the American Arbitration association, which are all the application of the application and arbitration arbitration arbitration are not the arbitration are not the arbitration arbitration

Minnesota 55466-0191, or on the interest at http://www.arbitestor-forum.com.
Whichever rules are chosen, the arthrator brill the 16 as attempt or presting judge and shall be satiscised in accordance with the applicable rules. The arbitrator health go to be set indeeding the dispute. The arbitration heart award shall be issued without ear written opinion. The arbitration heart gratal be conducted in the federal district in which You reside. If You demand arbitration first, You will pay the claimant's initial arbitration fitting these or case management the way the applicable rules up to \$125, and we will pay any additional enhalt filling the or case management the We will pay the which filling his or case management will pay the work on the filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the We will pay the which filling his or case management the West or the wealth of the pay and additional shall be arrived as the satisfaction entity reduced or waster that the application of the satisfaction entitle or the satisfaction of the satisfaction entitle or reduced as the satisfaction entitle or the satisfaction entitle oreduced as the satisfaction entitle or the satisfaction entitle or

may or swarted in any cours maving particulosion. Knowthstanding this provision, both You and Circillior and Cradition's successors and sastgness set right to secricis self-hale semedies and to each provisional remedies from a court, pending fixed determ of the rights by the arbitration. Felling or or selber the right to arbitrate by transcrising self-their Siling said, or seating or orbitation provisional remedies from a court. If any provision of this arbit agreement is bound to be smartherospicle or invalid, that provision shall be severed and the remaining pro-stable beginn this effect set if the alternation provision hald not been included.

sportes at laboramation. We habited

Macro Registrating Processors information release Your from the following sources:
formation we receive from You on applications and other forms
formation about Your transactions with us, our affiliates, or others; and
formation we receive from Occurate reporting agendates and other outside sources.

Categories tel Information We Ulacions

er and Third Parties to Whem We Disclose to

emation About Current and Former

Examinates
We may disclose all of the Information that we collect, which relates to our transactions or experiences
with You among our affiliated companies. Companies, which are affiliated with us, include any company
what controls us, any company was correct, or any company under common control with us, in other
words, it is any company that is in our 'family of companies."
We may disclose all of the information that we collect, as described above, to companies that per form marketing
services on our briefly or to other transaction that we collect, as described above, to companies that per form marketing
services on our briefly or to other transaction that whom we have joint marketing agreements.

PRIVACY POLICY OF DAIMLERCHRYSLER SERVICES HORTH AMERICA/CHRYSLER FINANCIAL/DCFS TRUST ("we," "us," and "our")

We may also disclose all of the information that we collect, as described above, will third parties as parmitted by law.

Getting data of Discourse

Because we only disclose information to nonefflinted third parties as a marketing agreement, opt outs of such disclosures are not required.

Policing and Practices to Protect the Confidentiality and Security of the ublic Personal Inf Commence and Linearces and Linearces and Linearces and Section and Section and Linearces and Linearces and Section and Linearces and Section and Section and Devaluences which jointly market our products and services, also need or may need to know that in to provide products or services to You. We resintain physician, electronic, and presenter a forecast or You have been product from the product of the section of the sectio

Privacy Policy Chauses and Februs Disciona

We may from time to time change our Privacy Policy. Therefore, we reserve the right to disclose any and all information to our stitistes and other nonetilisted third parties as permitted by law.

ASSIGNMENT

Willhard Recourse or Perment Chilestien, except in the circumstances noted above.

Full Poyment Obligation - Should Buyer default under this Contract at any time, Seller uncovering under this Contract, in principal, interest, costs, expenses, and attorney's tees. felonally, and with waiver of all defenses, agrees to pay to Assignee immedia

Limited Physices Obligation - Should Boyer default under this Contract at any time, Seller of the uspaid principal belance then owed under this Contract up to a madmum of \$ Blonally, and with webver of all defences and rights of subrogation, agrees to pay Assignee interediately on demand ____, together with all interest, cooks, expenses, and attorney's fees that may then be owned by Buyer.

Felt Repurshage Chillagetien - Should Buyer default uncler this Common at any time and Assignee obtains possession of the Vehicle by any means, Salter unconditionally, and with waiver of all defendes, agreed to purchase the Vehicle from Assignee at private sale for an amount equal to the full organization than organization under this Contract, in private, internat, coats, expenses, and attorney's fees. Limited Reportance Chilipatina - Stroubli Buyer debuil under this Contract faming the first _______morths of the Contract term, and Ausignes obtains possession of the Vehicle by any masses, Select unconclidionally, and with vehicle from Applicable and vehicle from Applica

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class U.S. Postage PAID Permit No. 171 St. Paul, MN

GIESEKE LOWELL BERNARD OR GIESEKE DEBRA KAY 1333 1ST AVE BOX 503 GIBBON MN 55335

JBU087

 Veer
 JEEP Make
 4WGCK Model
 H1340P251

 1J4GW58N22C214638
 04/15/02
 NO Security Date

1ST SECURED PARTY

LIEN HOLDER

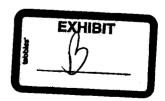
RETAIN THIS DOCUMENT - See reverse side of this form for removing this lien.

06

DAIMLERCHRYSLER SERVICES NORTH AMERICA LLC PO BOX 600 HORSHAM PA 19044-0600

MAY 21 2002





Case No. 03-38286 GFK

In Re:

Chapter 7

Lowell B. Gieseke and Debra Kay Gieseke,

Debtors.

VERIFICATION

I, Joseph M. Quielly, an employee of DaimlerChrysler Services North

America, L.L.C. named in the foregoing Notice of Hearing and Motion for Relief from Stay,

declare under penalty of perjury that the foregoing is true and correct according to the best of my

knowledge, information and belief.

DATED: $\frac{\sqrt{\partial///}}{\sqrt{2004}}$, 2004

SIGNED:

Case No. 03-38286 GFK Chapter 7

In Re:

Lowell B. Gieseke and Debra Kay Gieseke,

Debtors.

MEMORANDUM OF LAW

INTRODUCTION

DaimlerChrysler Services North America, L.L.C.successor in interest to Chrysler Financial Company, L.L.C. ("DCS") has made a motion for relief from the automatic stay. DCS incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan that is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due and DCS has been unable to verify current proof of insurance. DCS seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

ARGUMENT

Pursuant to 11 U.S.C. § 362(d)(1), a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. The motion, filed by DCS, for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the automatic stay. <u>United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re</u>

Timbers of Innwood Assoc. Ltd.), 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle that is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. §362(d)(2). **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

CONCLUSION

Based on the foregoing, DCS requests that the Court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. §362(a) to permit DCS to enforce and foreclose its personal property security interest.

DATED: October 12, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn

Marilyn J. Washburn, #0324140 7700 Bonhomme Ave., 7th Floor St. Louis, MO 63105 (314) 727-0101 FAX (314) 727-1086 Attorneys for DCS

Case No. 03-38286 GFK Chapter 7

Lowell B. Gieseke and Debra Kay Gieseke,

In Re:

Debtors.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme Avenue, 7th Floor, St. Louis, Missouri 63105, declares that, on the date listed below, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law** and **Proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class postage prepaid and depositing same in the post office at St. Louis, Missouri, addressed to each of them as follows:

(Debtor) Lowell B. Gieseke 1333 1st Avenue Gibbon, MN 55335

(Debtor) Debra Kay Gieseke 1333 1st Avenue Gibbon, MN 55335

(Debtor's Attorney) Laurence Stratton Muske Muske & Suhrhoff PO Box 143 Springfield, MN 56087 (Chapter 7 Trustee) Paul W. Bucher PO Box 549 Rochester, MN 55903

Office of the U.S. Trustee 1015 U.S. Courthouse 300 South 4th Street Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: October 12, 2004

Signed: /e/Marilyn J. Washburn

In Re:		Case No. 03-38286 G Chapte				
Lowell B. Debra Kay	Gieseke and y Gieseke, Debtors.					
	ORD	ER				
Th	e above entitled matter before the Court	for hearing on, 2004,	on			
the motion	n of DaimlerChrysler Services North An	nerica, L.L.C., successor in interest to Chrys	ler			
Financial (Company, L.L.C. ("DCS"), seeking relic	ef from the automatic stay of 11 U.S.C. §				
362(a). A	ppearances are as noted in the Court's re	ecord.				
Ba	sed on the proceedings had on said date	, the statement of counsel and all the files an	ıd			
records he	erein, the Court now find that cause exist	s entitling DCS to relief from the automatic				
stay.						
NO	OW, THEREFORE, IT IS HEREBY O	RDERED that:				
1.	The automatic stay is immediately	terminated as to DCS and DCS is authorized	l to			
proceed w	rith its legal remedies according to state	law as to the subject motor vehicle,				
	a 2002 Jeep Grand Cherokee, VIN	# 1J4GW58N22C214638.				
2.	Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective					
immediate	ely.					
DA	ATED at St. Paul, Minnesota, this	_ day of, 2004.				
		BY THE COURT:				
		Gregory F. Kishel United States Bankruptcy Judge	_			